In the High Court of Judicature at Madras

Date : 18.01.2005

CORAM:

The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

Writ Petition No.34556 of 2004
and
WPMP Nos.41680 and 41681 of 2004

Bharathiya Electricity Employees
Federation, Regn.No.990/SLM,
rep. by its General Secretary,
No.5/38-V, Arumugam Nagar,
New Fairlands, Salem-636016. .. Petitioner

vs.

1. Tamilnadu Electricity Board,
   rep. by its Chairman,
   No.800, Anna Salai,
   Chennai-600002.

2. The Chief Engineer (Personnel),
   Tamil Nadu Electricity Board,
   No.800, Anna Salai,
   Chennai-600002. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records in connection with employment Notice Letter No.81288/875/G.56/G.561/2004-1 dated 16.10.2004 issued by the 2nd respondent on behalf of the 1st respondent and quash the same in so far as it excludes the duly qualified Assessors and direct the respondent Board to include the duly qualified Assessors also for consideration for appointment to the post of Junior Auditors.

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For Petitioner : Mr.V.Prakash, SC
for Mr.P.Chandrasekaran

For Respondents: Mr.V.Radhakrishnan,
Standing Counsel TNEB

O R D E R

The petitioner, who claim to represent the Assessors in the first respondent Board, has come forward with the writ petition challenging the employment notice letter No.81288/875/G.56/G.561/2004-1 dated 16.10.2004 issued by the second respondent on behalf of the first respondent. While seeking to quash the said proceedings, the petitioner also seeks for a direction to the first respondent Board to include the duly qualified Assessors also for consideration for appointment to the post of Junior Auditors.

2. As per the impugned letter dated 16.10.2004, the second respondent has circulated the said letter to all the Superintending Engineers to call for applications from the willing employees in the categories of Junior Assistant/Administration and Junior Assistant/Accounts who possess the requisite qualification viz., B.A., B.Sc., and B.Com., for appointment to the post of Junior Auditors by transfer method. The said letter also makes it clear that there will be a selection from amongst the applicants and that such selection will not be available to those who failed to apply. It also prescribed 10.11.2004 as the cut off date for making the applications.

3. Mr.V.Prakash, learned senior counsel appearing for the petitioner, while drawing my attention to Regulation 92 of the Tamil Nadu Electricity Board Service Regulations as well as Annexure III of the said Regulations, in particular the clause relating to the recruitment to the post of Junior Auditors, contended that the method of recruitment in Column 2 of Annexure III in regard to the post of Junior Auditors specifically mentions that it can be either by way of direct recruitment or appointment from Junior Assistant in the Board Office, Administrative Branch, Accounts Branch, Technical Branch and other Subordinate offices or appointment from Typists including Steno-Typists or appointment from Assessors

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in Circle Offices and therefore, the impugned letter of the second respondent restricting the zone of consideration to the categories of Junior Assistants/Administration and Accounts alone is not valid.

4. Per contra, Mr.V.Radhakrishnan, learned standing counsel for the Tamilnadu Electricity Board, would contend that in the Annexures I to III of the Regulations for different categories of post, in the column relating to the method of recruitment different expressions have been used, such as "internal selection or direct recruitment or appointment or direct recruitment or appointment by internal selection or direct recruitment or by promotion and so on" and therefore, when in relation to the post of Junior Auditors, the expression used is direct recruitment or appointment from certain categories, it cannot be held that appointment from certain categories would also be by means of selection. According to the learned standing counsel, in so far as the post of Junior Auditors is concerned, when the Board prefers to the other method of appointment, other than direct recruitment, it is merely by way of transfer from any of the other categories to the post of Junior Auditors and the Board can always restrict such transfer of appointment to one particular category and need not go in for a selection from all the prescribed categories. Learned standing counsel further contended that even assuming that such appointment by transfer should also be by way of a selection process, then again the Board is entitled to prefer any one particular category from among the different categories provided in the Regulations and need not necessarily throw upon the post for all the categories. Lastly, it was contended that in the light of the fact that more number of Assessor posts are vacant in different circles, the Board thought it fit not to resort to any appointment by way of transfer from the category of Assessors.

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5. Having heard the learned counsel for the respective parties, I am of the view that the contention of the petitioner is forceful and merits acceptance. The relevant clause as mentioned in Annexure III can be extracted for better appreciation, which is to the following effect:

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Annexure-III

Post	Method of Recruitment	Qualification
Junior Auditors	Direct Recruitment or appointment from Junior Assistant in the Board Office Administrative Branch, Accounts Branch, Technical Branch and other Subordinate Offices or appointment from Typists including Steno-Typists or appointment from Assessors in Circle Offices.	Must hold the B.A. or B.Sc. or B.Com. degree of the Chennai or Annamalai University.

6. A reading of the above said clause shows that for filling up the post of Junior Auditors, the Board can either resort to direct recruitment or appointment from the various categories provided therein subject to the concerned individuals possessing the prescribed qualification. In fact, when the above said Regulations is read along with paragraph 2 of the impugned letter, it can be easily visualised that any such appointment even from among the existing staff within the specified categories can only be by way of selection. Paragraph 2 of the impugned letter can be usefully referred to which reads as under:

> "Those who are qualified and passed the above said degree and those who are willing, should submit their applications, in the prescribed format (a specimen of which is enclosed) to their head of Office on or before 10.11.2004 and those who do not apply, will not be considered for selection". (emphasis added)

7. Even the second respondent has understood the scope of appointment as provided in the above said Regulations to the effect that it can only be by way of selection. Even otherwise, it is common knowledge that whenever any

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appointment is resorted to from among the existing staff in the service of the Board for specified number of posts, when more number of candidates apply for less number of posts, selection will be inevitable or otherwise it will result in arbitrariness and would provide scope for pick and choose by the employer. Such a method of arbitrary appointment can never be approved. Therefore, while interpreting the rule relating to appointment even from among the existing staff of the respondent Board, merely because in respect of certain other posts the specific expression 'internal selection' has been mentioned, which expression does not find a place in regard to Junior Auditor, it cannot be taken to mean that in the case of Junior Auditors, in the absence of such a specific expression, the respondent Board is entitled to make any appointment according to its whims and fancies. Such a stand of the respondent Board cannot therefore be countenanced. Therefore, I am convinced that the contention of the petitioner that whenever the respondent board seeks to fill up the post of Junior Auditors by way of appointment from among the existing categories of employees, such appointment can only be by way of selection, which would necessarily involve consideration of merits.

8. As far as the other contention that even while making such selection, the respondent Board is entitled to restrict the scope of such selection to certain categories alone, it will have to be held that a reading of the above said Regulations disclose that appointment to the post of Junior Auditors can be from different categories such as Junior Assistants, Typists, Steno-typists and Assessors. In other words, all the above four categories of employees in the service of the Board are entitled to aspire for the post of Junior Auditors as and when any vacancy arises and any appointment is resorted to. When that be the case, it will not be open to the respondent Board to confine such appointment to a particular category of Junior Assistants alone merely on the footing that the said category came to be mentioned in column No.2 in the first instance and the category of Assessors came to be mentioned as a last one. Such a contention of the respondent Board cannot also be accepted as that would provide for an arbitrary way of dealing with different categories when it comes to the question of making a selection to a particular post. If

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really such a preference could be made by the respondent Board, it would have been spelt out in such specific terms in the Regulations itself. Therefore, in the absence of any such specific stipulation contained in the Regulations, it cannot be inferred merely based on the order in which different categories are mentioned in the Regulations that the respondent Board would be entitled to prefer one category, which is mentioned in the beginning to that of the other category which is mentioned at the end. Therefore, the said contention also does not merit acceptance.

9. As far as the last contention that there are more number of vacancies in the post of Assessors and in view of the ban imposed by the State Government, the respondent Board wanted to restrict the scope of selection to the post of Junior Auditors from among the Junior Assistants is not a valid contention. The ban imposed by the State Government cannot invalidate or deprive the right of Assessors to become Junior Auditors in the event of the Assessors being entitled to demonstrate their excellence and secure the post of Junior Auditors in the process of selection. The denial on such a ground would be wholly unreasonable and unjustified and therefore, on that ground also, the stand of the respondent Board cannot be countenanced. Looked at from any angle, the approach of the respondent Board in restricting the scope of appointment to the post of Junior Auditors from among the category of Junior Assistants alone cannot be justified and therefore, I am obliged to interfere with the same. Accordingly, the writ petition stands allowed and the impugned order is set aside. It is open to the respondent Board to resort to selection of Junior Auditors by extending opportunity to all the categories, which are provided in the Service Regulations as referred to above. No costs. Consequently, WPMP.Nos.41680 and 41681 of 2004 are closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chairman,
   Tamilnadu Electricity Board,
   No.800, Anna Salai,
   Chennai-600002.

2. The Chief Engineer (Personnel),
   Tamil Nadu Electricity Board,
   No.800, Anna Salai,
   Chennai-600002.

+ 1 CC to Mr. V. Radhakrishnan, Advocate (SR 1821)

+ 1 CC to Mr. P. Chandrasekaran, Advocate (SR 1793)

W.P.No.34556 of 2004

18.01.2005.

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